

## MEETING RECORD

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, June 2, 1999, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

**MEMBERS IN ATTENDANCE:** Russ Bayer, Steve Duvall, Barbara Hopkins, Greg Schwinn, Rick Wallace and Joe Wilson (Ann Bleed, Gerry Krieser and Cecil Steward absent). Ray Hill, Steve Henrichsen, Jennifer Dam, Nicole Fleck-Tooze, Rick Houck, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

**STATED PURPOSE OF MEETING:** Regular Planning Commission Meeting

Chair, Barbara Hopkins called the meeting to order and requested a motion approving the minutes for the meeting held May 19, 1999. Motion to approve made by Duvall, seconded by Wilson and carried 6-0: Bayer, Duvall, Hopkins, Schwinn, Wallace and Wilson voting 'yes'; Bleed, Krieser and Steward absent.

**CONSENT AGENDA**  
**PUBLIC HEARING & ADMINISTRATIVE ACTION**  
**BEFORE PLANNING COMMISSION:**

June 2, 1999

Members present: Bayer, Duvall, Hopkins, Schwinn, Wallace and Wilson; Bleed, Krieser and Steward absent.

The Consent Agenda consisted of the following items: **WAIVER OF DESIGN STANDARDS NO. 99006, WAIVER OF DESIGN STANDARDS NO. 99007 AND STREET AND ALLEY VACATION NO. 99005.**

**Item No. 1.1, Waiver of Design Standards No. 99006, and Item No. 1.3, Street and Alley Vacation No. 99005,** were removed from the consent agenda and scheduled for separate public hearing.

Bayer moved to approve the remaining Consent Agenda, which only consists of Waiver of Design Standards No. 99007, seconded by Schwinn and carried 6-0: Bayer, Duvall, Hopkins, Schwinn, Wallace and Wilson voting 'yes'; Bleed, Krieser and Steward absent.

**STREET & ALLEY VACATION NO. 99005**  
**TO VACATE A PORTION OF WEST "E" STREET**  
**RIGHT-OF-WAY FROM FOLSOM TO S.W. 6<sup>TH</sup> STREET.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

June 2, 1999

Members present: Wilson, Schwinn, Bayer, Duvall, Wallace and Hopkins; Steward, Bleed and Krieser absent.

Planning staff recommendation: A finding of conformance with the Comprehensive Plan and Conditional approval.

This application was removed from the Consent Agenda and scheduled for separate public hearing due to the receipt of a letter in opposition.

Proponents

**1. Kent Seacrest** appeared on behalf of **Lincoln Plating Company** and submitted a Motion to Amend the conditions of approval. This is the vacation of part of a street (33'). Last fall the preliminary plat showed a new master plan for the area. Part of that master plan proposed the new "E" Street for trucks to get in and out of the campus and the industrial land further to the east. This was approved by the Council. This application is the vacation of that half street now that the new street has been created by the approved plat.

Mr. Seacrest noted that the letter in opposition inquires about the future plans of Lincoln Plating; however, none of those plans are in front of the Commission at this time. If and when they put in a parking lot, it will require a special permit and its own public hearing. Lincoln Plating will work with the neighbors. They did have a neighborhood meeting about the master plan and no one objected to the changing of the road network. This application is to do what the approved plat provides.

Mr. Seacrest requested that the Commission ignore his proposed new Condition #3 regarding consideration for the vacation of this street because it is a Council matter. He also requested that Condition #1 be amended to delete the reference to future sanitary sewer, electrical and telephone facilities. Lincoln Plating will agree to retain the existing utilities and replacing them, but would not want the city to add new utilities. With the new street being created, there is plenty of room for the utilities. Mr. Seacrest believes that Public Works is in agreement with his proposed amendments.

There was no testimony in opposition.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

June 2, 1999

Schwinn moved approval of the Planning staff recommendation of conditional approval, with amendments as requested by the applicant, seconded by Bayer and carried 6-0: Wilson, Schwinn, Bayer, Duvall, Wallace and Hopkins voting 'yes'; Krieser, Steward and Bleed absent.

**WAIVER OF DESIGN STANDARDS NO. 99006**  
**FOR A VARIANCE OF THE DEPTH OF LOT REQUIREMENTS**  
**WHEN ABUTTING A THOROUGHFARE,**  
**ON PROPERTY GENERALLY LOCATED ON THE EAST**  
**SIDE OF SO. 56<sup>TH</sup> STREET, GENERALLY IN LINE WITH**  
**SPRUCE STREET, SOUTH OF PIONEERS BLVD.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

June 2, 1999

Members present: Wilson, Schwinn, Bayer, Duvall, Wallace and Hopkins; Steward, Bleed and Krieser absent.

Planning staff recommendation: Approval.

This application was removed from the Consent Agenda and scheduled for separate public hearing at the request of Robert Otte.

Proponents

**1. Billy Joe Kerr**, 540 W. Industrial Drive, testified on behalf of the applicant, stating that this waiver is requested in order to divide two lots that front on 56<sup>th</sup> Street with one access. There is an existing access used by the residence and they will not add more accesses to 56<sup>th</sup> Street. This will be part of the infill development.

**2. Bert Newell**, 4500 So. 56<sup>th</sup>, the applicant, wants to widen the access area so that cars can enter and exit at the same time. This waiver is a request to proceed with the development of the two lots.

Opposition

**1. Nancy Schoen**, property owner at 4530 So. 57<sup>th</sup>, expressed concern that most neighbors were not notified of this hearing, including the homeowner directly next door to her. She is confused about the future plans for the property. Will it be divided into two lots? She wants more information on the plans for the property.

**2. Robert Otte**, appeared on behalf of Shawn Reeves, who believes there has been some confusion with regard to this property. His client lives immediately south of this real estate and they had thought there would only be one house on this frontage lot. Section

26.31.010 of the subdivision ordinance talks about modifications of the requirements which require there to be actual difficulty or substantial hardships or injustice to justify a waiver. Mr. Otte does not believe that is present in this case nor does the application indicate that there is such hardship or injustice. Mr. Otte cannot vision three houses on this property. The house that exists on the property is oriented towards 56<sup>th</sup> Street, so if the property is cut into three lots, there will be three homes taking access off 56<sup>th</sup> Street. Within the last month, his client was backing into his driveway and was hit by traffic on 56<sup>th</sup> Street. To put three more uses of this driveway in that area represents a danger. With the existing house oriented toward 56<sup>th</sup>, the lot on 56<sup>th</sup> should be a single family dwelling, and if not a single family, then only a duplex. It is almost impossible to fit two separate dwellings on this property. The waiver is the 120' setback. If you study the diagram and the aerial map and try positioning two residences on the two lots, it becomes unworkable. With the use of 56<sup>th</sup> Street and the inability of this residence to take advantage of a 57<sup>th</sup> Street access, this will not work because of the orientation of the house. Mr. Otte purports that there is room for a single family dwelling or a duplex.

Mr. Otte also suggested that the applicant is now using his home as a duplex dwelling, which it not necessarily legal at this time.

Mr. Otte believes this proposal is ill-conceived at this point in time. His client would be happy to work with the developer, but for now, with the lot lines, it appears that this site is unsuitable.

Mr. Otte's client has not talked substantively about this development with the applicant; however, his client did receive notice of this hearing.

#### Response by the Applicant

Mr. Kerr clarified that the proposal is to develop three lots – one existing house and two additional single family lots, both of which meet the required area but not the required depth based on abutting a thoroughfare. The 93.04' for Lot 3 was computed by himself and by Building & Safety, taking the area divided by the frontage to come up with the depth of the lot.

Mr. Kerr also advised that there is a driveway on 57<sup>th</sup> Street that they intend to use. He does not have anything drawn out as far as putting the house on 57<sup>th</sup> Street. On 56<sup>th</sup>, they want to widen the access area for ingress and egress so they would not have to back out onto 56<sup>th</sup> Street. They would leave the remaining turn-around and get easements. Mr. Kerr added that they are showing a driveway access easement which allows all vehicles to enter and exit the property in a forward manner without requiring any backing out onto 56<sup>th</sup> Street.

Hopkins asked whether the developer had tried to meet with the neighbors. Mr. Newell stated that in the past they have talked about some of his future plans, but they had not

discussed any detail and he did not realize there was a problem or objection. Hopkins advised that frequently, the Planning Commission will ask people to meet in advance and if people are not in agreement she likes to put off the vote until they've had an opportunity to meet.

Hopkins moved to defer, with continued public hearing and administrative action on June 16, 1999, requesting that the developer meet with the neighbors, seconded by Wallace and carried 5-1: Wilson, Bayer, Duvall, Wallace and Hopkins voting 'yes'; Schwinn voting 'no'; Krieser, Bleed and Steward absent.

**PRELIMINARY PLAT NO. 98030**  
**HIGH POINTE NORTH COMMERCIAL CENTER**  
**ON PROPERTY GENERALLY LOCATED**  
**AT NO. 27<sup>TH</sup> STREET AND WHITEHEAD DRIVE.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

June 2, 1999

Members present: Wilson, Schwinn, Bayer, Duvall, Wallace and Hopkins; Krieser, Steward and Bleed absent.

Planning staff recommendation: Conditional approval, with revisions.

Jennifer Dam of Planning staff submitted a site plan which was inadvertently omitted from the staff report. She also submitted reports from Public Works and the NRD which were not available at the time of printing of the staff report. The NRD has concerns about stormwater flow and rate of flow as it flows into the wetland to the north, and Public Works has expressed concerns and requests additional information on traffic. Thus, the staff report is revised to add Conditions #1.1.10 and #1.1.11 to address these concerns.

**Proponents**

**1. Jack Lynch** appeared on behalf of the developers, stating that this application seeks approval of a plat of 60 acres of highway commercial. With regard to the concern about traffic and off-site improvements, Mr. Lynch believes this issue is covered by the previous Annexation Agreement. With regard to the concern about the wetland on the northeast corner of the property, he is sure they can work with staff and the NRD to accommodate those concerns.

Further, in regard to the traffic improvements, the Annexation Agreement provides that if they exceed the projected traffic counts, they are required to do certain off-sites and they do not disagree. Mr. Lynch further testified with regard to the wetland issue, stating that everyone is in agreement that it is a pristine wetland that should be conserved. They are working towards hanging onto that wetland and not impacting it. The only issue with the NRD may be that the current property drains into that wetland and they will be required to detain and retain pre-development runoff; however, if they are trying to take the water

somewhere else, this is not possible and they will have to work with the NRD. He is sure they can come to agreement.

There was no testimony in opposition.

Ms. Dam was comfortable with Mr. Lynch's comments.

There was not a representative of the NRD available to respond.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

June 2, 1999

Bayer moved to approve the Planning staff recommendation of conditional approval, with the revisions submitted today, seconded by Wilson and carried 6-0: Wilson, Schwinn, Bayer, Duvall, Wallace and Hopkins voting 'yes'; Bleed, Steward and Krieser absent.

**PRELIMINARY PLAT NO. 99008**

**PINE LAKE HEIGHTS 2<sup>ND</sup> ADDITION,**

**ON PROPERTY GENERALLY LOCATED**

**AT SOUTH 34<sup>TH</sup> STREET AND WHITLOCK ROAD.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

June 2, 1999

Members present: Wilson Schwinn, Bayer, Duvall, Wallace and Hopkins; Steward, Bleed and Krieser absent.

Planning staff recommendation: Conditional approval.

Steve Henrichsen of Planning staff submitted revised conditions of approval, eliminating Condition #2.4, which deals with the large 30-acre lot that was for the church property. Condition #2.4 required that the lot remain as an outlot and not be platted as a buildable lot until the sewer came from the south, etc. Instead of that, staff is proposing a compromise in which that large 30-acre lot could be generally split in half for the northern half to be buildable and the south half would be an outlot that would have 50' frontage. The rest of the outlot is basically surrounded by unplatted streets at this point and we have no idea that the southern lot line is appropriate for future development of streets, etc. Mr. Henrichsen suggests that it is more in the public interest and the development itself that the southern part be an outlot so that it can be replatted in the future.

**Proponents**

**1. Kent Seacrest** appeared on behalf of Ridge Development Company and Southview, Inc., and submitted proposed revisions to the conditions of approval. Mark Hunzeker represents the Horizon Church. The developer has agreed to redo the grading plan and

sewer plan and lower a street called O'Malley Drive abutting Porter Park. This reduces the grade substantially as it gets to the edge of the park. They had proposed a bike trail that staff wanted to have relocated, so they have agreed with staff to delete the bike trail at this time because they are not sure the major bike trail should go east/west or north/south, and this will be deferred until the church completes their planning process.

Mr. Seacrest discussed four amendments to the conditions to which the staff takes issue:

--The developer is requesting to create one buildable lot, 30 acres in size. One lots means one building. The north half is sewerable under the plat; the south half will be sewerable in approximately 2 years. Even though the south half is not sewerable today, it is lawful to do a private injection if the church decides to build on this half; and this does not require a waiver.

--The developer is showing a street on mostly the west 2/3rds of that lot that they will be building and that lot has frontage under the subdivision requirements. With regard to block length, the subdivision ordinance requires a block every 1320 feet, **except** or when the land use forms one boundary of a block. In other words, there is a unique land use causing there not to be a need for a street and he believes the church reflects that exception. The church has over three blocks of street frontage with many ways to circulate. Thus Mr. Seacrest believes the church meets the definition of a legal one buildable lot.

**2. Mark Hunzeker** appeared on behalf of Horizons New Community United Methodist Church, which owns a parcel on South 27<sup>th</sup> south of Yankee Hill Road, but it is right in the middle of where Mr. Seacrest's client would like to develop a golf course. Thus, the church has worked out an agreement to trade land with the developer of this plat to facilitate residential development and the development of the golf course and to become part of this plat, eventually to have a church building, parking, youth activities, etc. on this parcel for this now small but growing congregation.

Mr. Hunzeker agreed with Mr. Seacrest's envision of the subdivision ordinance. In addition to having a block in which the church forms the entire boundary of one side of the block, they are also a land use which is a substantially different land use forming that boundary along the east side. The church does intend to build on this property but does not know at this time exactly where. They have not completed master planning this site. They are still in the fund raising mode. The bottom line is that if this 30-acre parcel is required to make half non-buildable, they could legally simply take that entire parcel out of this plat and not include it in a final plat. Then it would be an Irregular Tract which is separate, buildable and in no way subject to any further regulations according to this plat. They are choosing to leave it in, but if they are going to be required to make half of it non-buildable, they can simply take it out of this plat. Mr. Hunzeker understands that there is some level of uncertainty about the alignment of the streets that abut on the south and southwest, but they are confident enough in the layout that they are ready to go forward on this basis. The

church will have to be involved in any realignment of either one of those streets regardless. The church would prefer to get the benefit of the bargain with the developer and have one buildable lot.

There was no testimony in opposition.

Steve Henrichsen of Planning staff responded, stating that there are two different points about the exact same lot—the 30-acre lot. Until the southern road is platted, the access to this lot will be back through Porter Ridge West or Pine Lake Heights. While churches are an allowed use in the area, this could be a substantial use based on the size of the lot and could generate a lot of traffic. The staff's concern has two parts: the northern part can be sewered to the north. The rest of the area is part of a much larger area of nearly 300 acres that will be part of a future preliminary plat. The city has not reviewed the future collector street and there has never been any information submitted to determine the street access. It is the southern part of the plat that is being held for future development. Staff has also discussed with the church that a separate reason for not granting the block length waiver is that it might make sense for this church to have access to 33<sup>rd</sup> Street in the future. If the waiver is granted, there will be no access to 33<sup>rd</sup> Street. The staff could only support this shape of the lot as the rest of the surrounding area is submitted and proposed for development.

Mr. Henrichsen stated staff's further concern is that a 30 acre parcel for some churches is much larger than they will need. They could sell off a portion for residential development and that is another reason the staff would oppose the block length waiver.

Bayer asked about the option of removing this lot from the plat as suggested by Mr. Hunzeker. Mr. Henrichsen concurred that to be correct. It could be done as an Irregular Tract in the shape as proposed and it would be a buildable lot. As part of the plat, staff is not recommending that the lot be approved in this manner.

Wilson asked whether there is any thought as to when the development south will begin or continue. Mr. Henrichsen is aware that the sewer is going to take a year or so, and we will be talking about concept plans for the southern part. Staff is not opposed to that street. We just have not had a chance to identify the location. Wilson is curious as to whether or not it makes any difference because we're looking at sometime in the future for the church development anyway.

Mr. Henrichsen further commented that typically, the "substantial different character" definition has been used for the difference between residential and commercial. A church is an allowed use in a residential district so he can see a case made that they are both residential type uses. Particularly, a church of 30 acres in size will have a substantially different character than all the residential uses around it. Because we do not know what is happening to the south, we believe the waiver is premature at this point in time.



Response by the Applicant

Mr. Seacrest believes this represents a lot of form over substance. It can be a buildable lot one way or the other, and the developer believes it can be buildable under a preliminary plat as opposed to an I.T. There is nothing that requires the church to preliminary plat all their land. Mr. Henrichsen is assuming that the church wants access to the east, and right now they say they don't. Also, Mr. Seacrest does not believe we can assume that the church will want to split off their land and sell other lots.

Bayer believes that the neighbors along 33<sup>rd</sup> Street have a right to know that there may be future access. What would be wrong with putting a road in there now? Mr. Seacrest stated that it would take away a buildable lot which was the agreement; we then have to pay concrete to stub that street; and the Church will have to figure out how to terminate it. Bayer wants the neighbors to know there could be a street there. But, Seacrest pointed out that we would be guessing where it would be located if the church did want a street there, and if we guess wrong we will upset the neighbors. Bayer suggested that if the church wants to stand in front and say they will guarantee that they will never go to the east, he has no problem. Mr. Hunzeker advised that the church's negotiations with the developer included a row of lots all the way along the east boundary; the church assumes that they will not have access to the east; and the church does not assume that they will ever want access to the east. The church does not want to have to grant a cul-de-sac so that they can get access. If the church wanted access to the east, the lot configuration would have some width of an extension going out to that street. They cannot take access to a stub street off the end of a stub. They are confident that they do not need it. The church will not be asking for it; they don't care about it; they believe there are plenty of points along the west and south sides of the property to take access for ingress and egress and to go in all directions within this section. The places in town where you have problems with church traffic are on major streets. By having this property on an interior section, there will be less trouble than if it were out on 27<sup>th</sup> Street or Yankee Hill Road.

Wilson inquired about the size of the congregation. Mr. Hunzeker stated that it is a new congregation of no more than 200 at this time. They are currently meeting at Scott Middle School.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

June 2, 1999

Wilson moved to approve the Planning staff recommendation of conditional approval, with the amendments requested by the applicant Seacrest, seconded by Schwinn.

Wilson is glad to see a church not located on a major roadway and he likes to see them back in the neighborhood.

Motion for conditional approval, with amendments requested by the applicant, carried 5-0: Wilson, Schwinn, Bayer, Duvall and Hopkins voting 'yes'; Wallace abstaining; Steward, Bleed and Krieser absent.

**STREET & ALLEY VACATION NO. 99004**  
**TO VACATE THAT PORTION OF NO. 8<sup>TH</sup> STREET**  
**LYING BETWEEN MANATT STREET AND HARTLEY STREET.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

June 2, 1999

Members present: Wilson, Schwinn, Bayer, Duvall, Wallace and Hopkins; Krieser, Steward and Bleed absent.

Planning staff recommendation: A finding of conformance with the Comprehensive Plan and conditional approval, with title to the property retained in the City and maintenance responsibilities transferred to the Parks & Recreation Department.

Proponents

**1. Jim Hannaway**, 3640 No. 8<sup>th</sup>, testified in support of his request to vacate the property and to purchase it. The property is a right-of-way for what would have been 8<sup>th</sup> Street. 30' of the street to the west is in Max Roper park; in the middle is a beautiful tree line which provides shade, a wind break and buffers the noise from the Interstate on his property. The property to the south between Hartley and Groveland has already been vacated and sold to the property owner. Mr. Hannaway wants to take ownership of the east 30' in order to add some yard to his yard to give his dogs some room to play. He has been maintaining the property for two years. He believes there has been some mis-communication as to who really owns this right-of-way. When we had the snow storm, the Parks cleaned the park side, but they would not clean the right-of-way next to his property. If the property belongs to the city, no one from the city has ever come out and mowed or done any maintenance on the 30' easement. It is mowed regularly on the park side. Mr. Hannaway wants ownership of the 30', and if there is a question of utility easements, he has no problem. He will put up a chain link fence with gates at each end. He does not plan to build on the 30'.

**2. Willard Schowalter**, 824 Hartley, testified in support. He purchased his property in 1969 and cleaned it up and has kept it maintained until about two years ago when Jim Morgan of the Parks Department came out to visit and told him that if he mowed any weeds or trimmed any branches, Morgan would see him in court. Mr. Schowalter stated that he then discontinued cleaning up the property. It has not been mowed this year. The city has never mowed or maintained any of the right-of-way.

Mr. Schowalter indicated that he is willing to purchase the right-of-way. They want to be able to clean it up and maintain it.

**3. Jim Morgan**, Parks & Recreation Director, clarified that he supports the vacation but not selling it to the neighbors. He does not believe he has ever met Mr. Schowalter and he disputes the statements attributed to him. City Parks & Recreation does not believe it is possible to abandon half of that right-of-way; however, Public Works can transfer ownership of the right-of-way to the Parks Dept. for maintenance. There is a significant problem with one of the properties because there is a mobile home and junk cars parked on the property. Mr. Morgan agrees that the tree mass is as important to the neighbors as it is to the Parks Department. Mr. Morgan clarified that he does not oppose abandonment of the right-of-way but is opposed to part of it being sold to the property owners.

Jennifer Dam of Planning staff clarified that the staff is recommending vacation of the entire street with ownership retained by the City. The neighbors are the applicants and their request is to vacate the entire street, with the western half to the City and the eastern half sold to the abutting property owners.

The property with the mobile home and junk cars has been turned in to the Quality of Life team by the Parks Department and the Planning Department has turned this concern over to the Building & Safety Department. The zoning ordinance does allow storage of mobile homes on property under certain conditions.

With regard to maintenance responsibility, Dennis Bartels of Public Works explained that when there is an unopened right-of-way abutting the property, the property owner is responsible for the vegetation up to the centerline of that right-of-way. Mr. Bartels agreed that the declaration to Mr. Schowalter not to maintain his portion was in error.

Wilson thought that when the city vacates they have to offer half of it to each adjoining property owner. Rick Peo of the City Attorney's office stated that not to be true.

Response by the Applicant

Mr. Hannaway advised that there is a city work order on file for the city to clean up the branches and the brush pile and it has not been cleaned up. Mr. Hannaway paid to have some of it hauled away. Bayer explained that if the Commission approves the staff recommendation, the area would be vacated and would become the property of the Parks Dept. and they would be responsible for taking care of it. Mr. Hannaway wants to make sure he will not be required to pay for it.

Mr. Schowalter acknowledged that he does have a trailer house that is being torn down. The only cars that he has on his property are licensed vehicles and they have been for the last four years. He does have some trailers out there, also.

With regard to the cleanup expense, Mr. Morgan advised that Parks is willing to do cleanup once the property is transferred to Parks unless it appears there has been significant dumping by adjoining neighbors. If so, they would be responsible for their share. Mr. Morgan also clarified that the Parks Department cleans trees and right-of-way for Public

Works. If they are public trees, then Parks does have that responsibility. They can tell what trees are city trees and what are not. Mr. Morgan stated that he did write a work order last winter to have the tree line cleaned up as a result of the storm. It will be done this year.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

June 2, 1999

Bayer moved to find the vacation to be in conformance with the Comprehensive Plan and to approve the Planning staff recommendation of conditional approval, seconded by Duvall. This transfers the ownership to the City with maintenance requirements transferred to Parks.

Wilson wants to know why we should not transfer half to adjacent property owners. Bayer was swayed by the existence of the tree mass and the Parks Dept. is in the world of keeping trees. If we sold the property, the buyer could sell it and the trees could get torn down. Wilson thinks Parks could do the same thing. Wilson believes the tree mass is probably more of a barrier for the neighbors than it is for the Parks Department from his perspective.

Motion carried 5-1: Schwinn, Bayer, Duvall, Wallace and Hopkins voting 'yes'; Wilson voting 'no'; Steward, Bleed and Krieser absent.

**MISCELLANEOUS NO. 99007**

**TO WAIVE RIGHT-OF-WAY WIDTHS**

**ALONG ROKEBY ROAD, BETWEEN**

**SOUTH 27<sup>TH</sup> STREET AND THE RAILROAD TRACKS.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

June 2, 1999

Members present: Wilson, Schwinn, Bayer, Duvall, Wallace and Hopkins; Krieser, Bleed and Steward absent.

Planning staff recommendation: Conditional approval.

Steve Henrichsen of Planning staff submitted a memo from Public Works containing several comments which have already been summarized in the staff report and all items have been included in the conditions of approval. No changes are necessary.

**Proponents**

**1. Kent Seacrest** appeared on behalf of **Wilderness Ridge LLC and Large Limited Partnership**. This application refers to the Wilderness Ridge project which was approved by the Planning Commission two weeks ago. The only issue was how to handle the south

edge of the plat, which is Rokeby Road. At least one or two neighbors did not believe the road was adequately addressed. He is requesting this waiver in anticipation of that. The Planning Commission recommended that Rokeby be half on the plat and half on the neighbors' property. That was not satisfactory to the neighbors nor the developer, so in anticipation of working out a better compromise, this waiver is being requested. They are trying to build a road in 50' of right-of-way, and that theory allowed 10' on the neighbors. Subsequent to this request for waiver, the developer has met with the neighbors several times and, four versions of a road plan later, they now have a plan for Rokeby Road--50' on the developer, 10' on the first neighbor; then 40' and 20' after going past the first neighbor. They do have a written agreement which has not yet been signed. They will avoid a special assessment process. This is a win-win-win and he complimented city staff for being patient. Mr. Seacrest still would like the waiver to be approved in case something breaks down. If they sign the agreements with the neighbors, this waiver is not necessary.

There was no testimony in opposition.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

June 2, 1999

Bayer moved approval, with conditions, seconded by Schwinn and carried 6-0: Wilson, Schwinn, Bayer, Duvall, Wallace and Hopkins voting 'yes'; Krieser, Bleed and Steward absent.

**COMPREHENSIVE PLAN CONFORMITY NO. 99006,**  
**DECLARATION OF SURPLUS PROPERTY;**  
**CHANGE OF ZONE NO. 3182,**  
**FROM R-2 TO B-2 PLANNED NEIGHBORHOOD BUSINESS**  
**AND P PUBLIC USE;**  
**AND**  
**USE PERMIT NO. 118**  
**FOR A NEIGHBORHOOD SHOPPING CENTER**  
**ON PROPERTY GENERALLY LOCATED**  
**AT CODDINGTON AND WEST "A" STREETS.**

June 2, 1999

Members present: Wilson, Bayer, Duvall, Wallace and Hopkins; Schwinn Krieser, Bleed and Steward absent.

Planning staff recommendation: A finding of conformance with the Comprehensive Plan on the declaration of surplus property; approval of the change of zone; and conditional approval of the use permit.

Proponents

**1. Mark Hunzeker** appeared on behalf of the developer of the proposed shopping center, **B&J Partnership**. People have been anxious for this development for a long, long time. There is now a developer and a major tenant who are willing to develop this site into something that will be a real asset to the neighborhood. However, this is an area which is just barely there in terms of how to get a shopping center to work, particularly, the size of the grocery store, etc. This developer is working hard to make this work for the commercial development and to improve the park.

The project includes a change of zone on a parcel which is part of the park. The reason for that strip of land becoming part of this project is in part access and in part parking and circulation for the shopping center. This has been an effort that has had a lot of input from both the staff and the neighborhood. Mr. Hunzeker stated that they have had very good cooperation from Planning, Parks and Public Works throughout this application. There was a neighborhood meeting which he did not attend that drew over a hundred people and he understands that the project was well received.

Mr. Hunzeker advised that almost all of the conditions have been worked out with staff in advance. In addition to acquiring park land, the developer has agreed to make improvements in the park in exchange for acquisition of that land. They have not yet received the valuation of that land, but it is their intent to make improvements to the existing park which will equal the value of that strip of land. A parcel will be retained for a recycling center. One of the conditions is to eliminate a parking lot which intrudes into the park and extend the sidewalk and grade the ball diamond and do grading for purposes of stormwater detention and for use as a skating rink in the winter. The improvements to the park will be very significant and the overall benefit to the neighborhood will be excellent.

With regard to the conditions of approval, Mr. Hunzeker noted that Condition #1.1.8 requires that they extend W. Garfield into another road so that it connects. It is his understanding that in a meeting with the neighbors it was generally agreed that extension of that street into the shopping center was not desirable. It does not meet up with the entrance road; it would come in at a very awkward point and would encourage traffic to be running through the neighborhood to the east. Therefore, Mr. Hunzeker requested that Condition #1.1.8 be deleted.

Condition #1.1.9 requires elimination of the second/northern drive on Coddington, the western drive on A Street, and to reconfigure the other drive on A street, so that there would be only one access point on Garfield and on A Street. This creates a problem, particularly on A Street. The developer has provided for a turn lane to go in and an island to be created for a right-in/right-out off Coddington. The staff report indicates that both will function at buildout. The problem is that trucks have to be brought in in a counter clockwise motion. If the exit points are moved as requested, those trucks will have to come out, turn left and then immediately turn right again and then turn left or right onto A. In

addition, it will make it difficult for inbound traffic because there will have to be a T somewhere in the area. This is an awkward configuration, especially for the trucks--they need the easternmost exit onto A Street, and for 99% of the other traffic coming in, they will want to come into the front of the center as opposed to the back door and around to the south. Both of these are far enough away from the intersection to provide for a left turn pocket based on present projections of traffic at Coddington & A. This developer feels extremely strong about the two entrances onto A Street. Both Coddington and A Street are designated as minor arterials in the Comprehensive Plan. They are not major arterials; they are not designated for four-lane divided roads. Therefore, Mr. Hunzeker requested that Condition #1.1.9 be deleted.

Condition #1.1.11 requires a 20' wide pedestrian easement around the 8' sidewalk, expanding the width of the sidewalk from 6' to 8' , which they will do, but they do not want to also do the 20' easement. They have agreed to put the fence to the west of the east property line and do some landscaping along the east side of the fence. In order to provide a 20' pedestrian easement for that sidewalk, they would have to virtually move the fence all the way to the east property line and eliminate that landscaping. This was being done for the neighbors. Mr. Hunzeker requested that the last sentence of Condition #1.1.11 be deleted (the 20' wide pedestrian easement).

Mr. Hunzeker does not intend to address the drainage issue other than it is the developer's understanding that they are not worsening drainage problems downstream from this site. They may be improving them marginally, but they are not making matters worse. He would not dispute that there are some problems to the north and east of this site.

**2. William Hergott, President of West A Neighborhood Association**, testified in support and expressed appreciation to the developer and Russ's IGA for coming through with this. On April 19, 1999, they held a meeting with the West A Neighborhood Association with 125 people attending. Clay Smith explained the plan. They worked through the minor problems. There were two people concerned about drainage and water on their property. Mr. Hergott has received 18 phone calls and 7 letters in support since that meeting. The residents want this to happen. Clay Smith has come out personally to look at the problems that have come up and tried to solve them. The neighborhood also supports the Parks & Recreation Department plan. The crowd was delighted with the new improvements to the park. There were concerns about opening W. Garfield and Washington. The neighbors request that this be kept closed. The jobs will be good for the children and the shopping center will be a great opportunity for the seniors.

**3. Cindy Williams**, member of **West A Board and past President of Roper School and Lakeview School organizations**, testified in support. This is a unique community that has been dreaming about a park for the children to play ball; an ice skating rink; jobs for the teenagers; a shopping center close to the neighborhood. There are some issues – safety; stop lights; and turn lanes, but, as proven with the school, this is a community that will work this out.

**4. Dan Navratil, Principal of Roper School**, and former Principal of Lakeview Elementary, testified in support. He believes the shopping center design is a great asset to the area, but there are some issues that really need to be considered and done simultaneously to make this function. The students at Roper were going to go to Pioneers Park today for a picnic. Roper is the closest school to Pioneers Park and there is no sidewalk. They would have to walk down Coddington so they did not go. Look at the streets coming – 45 mph in front of the school – and you're going to put a grocery store without additional streets and passage? This will be a backlog of traffic for blocks and blocks. This shopping center is needed. But first talk about the streets and then talk about the store. Once the store gets in, we will have some real major traffic problems that relate to A Street and South Street. The whole Coddington area and the street system needs to be addressed simultaneously. We need to consider how to get people into and out of the shopping center as a top priority. He wholeheartedly supports the shopping center, but the sidewalks and street systems must be addressed at the same time.

#### Opposition

**1. Marilyn McNabb**, who lives in the Park area, testified during this time; however, she is not necessarily in opposition. She has been there for 10 years and it is a very nice little park. She suggested that the notification letter be more explanatory. The property owners around her did not know anything about this plan. The Comprehensive Plan talks about the value of green space and it seems to her that the loss needs to be minimized wherever possible. The northeast corner of the park has about a dozen pine trees and several maple trees. She could not tell how many would come down for the parking lot being proposed. She requested that that corner not be sold or surplused for the parking lot. It seems to her that the parking lot will not be used for the park but for the shopping center; and it will reduce the green space. This would be a change that the developer may not be enthusiastic about but she believes they probably could live with it. She is glad staff did take out the new parking lot that would intrude into the park. It seems to her that there are a couple of ways to implement the principle of keeping the same amount of green space. How about asking the developer to put in some green space? No one asked them to. It's a pretty big area, especially given the water channel that runs through the area. Another idea is to put the proceeds from the sale into a fund that would buy more green space. The acquisition fund is used for street widening, which is the opposite of green space. She will raise this idea with the City Council. It has been well documented that the value of green space in commercial and residential areas is significant. Almost 90% of Lincolniters have said that natural green spaces are important within and around a city. This was a valid poll done by Parks.

The Parks & Recreation definition of a neighborhood park is different than the definition in the Comprehensive Plan. The Comprehensive Plan suggests open space for spontaneous play; wooded areas and the perimeter is landscaped. In the Parks Plan, it has a different tone—area for intense recreational activities. She would prefer the Comprehensive Plan definition.



Ms. McNabb stated that her neighbors did not know about the neighborhood meeting.

**2. Douglas Bramhall**, 1640 West A Street, testified in opposition. If this huge slab of concrete is allowed on the hill, there will be trouble for the neighbors. Those of us who have culverts are supposedly the owners. Why do I pay city taxes and own county culverts? The individual who owns property directly east of his property (four rental houses) has four culverts in a series that are grossly undersized, creating runoff that backs up in a furious pace during a healthy rain. The authorities tell us this cannot be changed and he questions why. The previous owners of his property were fully aware of this problem and landscaped and had the water during healthy rains go under the backyard fence and in a swift and high volume pace, and he questions why. The rain washes through his side yard adjacent to the house in a stream that would be about 3' wide. Why is his property handling this overflow? No matter how many retention ponds they build, it will not handle it in a large volume pace during heavy, healthy rains. If this development is allowed, Mr. Bramhall pleaded that some money first be put back into the neighborhood to install a storm sewer system that will handle this inevitable problem.

**3. Randy Cecrle**, 1633 West A Street, testified in opposition. He takes the brunt of the flow of the water. In one of the worst situations this spring, the water rose to a level of 5' in the empty field next to him, within 20' of his window and within 10' of Mr. Bramhall's basement window. The dike that created a retention pond can handle normal flow but cannot handle a one inch rain in an hour. The culvert is 3' going across; the culverts (4) under the rental houses are 2'. There are four flows that all join together. Because of the standing water in the ditch and the weeds he could not get down to measure it. Water does eventually drain off, but when it does overflow, it does go through Mr. Bramhall's yard and the city requires him to retain that water flow for those kinds of emergencies. If the solution to this problem is maintenance of the ditches, then why is Mr. Bramhall required to maintain a water flow?

Besides the water on the top, Mr. Cecrle is concerned about the underground water problems. His problems have increased and his sump pump runs continuously. This is why something needs to be done with this area.

Mr. Cecrle also urged that the street issues need to be addressed along with the water issues. "Marginal improvement" is not going to help these problems. If the extra accesses are removed, what does that do to the retention ponds?

Mr. Cecrle is not opposed to the shopping center, but his concerns need to be addressed.

**4. Verona Pearson**, 1641 West B, testified in opposition. She differs with Mr. Cecrle because she thinks she is taking the brunt of the water problems. She has lived here all her life and she has seen a lot of water; she has seen neighbors flooded; she has helped pack sandbags; in the 1970's, she ended up with a 4' retainer wall on the east side of her house to separate it from the designated wetlands; in 1995, she had what the city called

a “water table change” and she had 3' of water sitting in her basement for six months and paid \$4,000 with sump pumps and drain tile throughout the basement and garage; this year she has had water within inches of the garage; last year she fought to keep the wetlands, but the apartments are going up anyway with only a token drainage as wetlands retained. In the spring come rains and in the summer and fall they have mosquitoes because the wetlands do not totally drain. To date, this proposed area has been a holding area for a hill on top of Coddington and South Street and Roper School. The area of Coddington and A is in between the hill, South Street, Roper and her. Over the years they have continually filled this area with fill dirt. At the east end, it is approximately 4' high over the lowest point. To put this into cement and buildings and parking lots that would not soak up the water would not be in the best interests of those who already have homes in the low-lying areas and wetlands. There is a need for larger culverts to meet the excessive volume; the existing culverts need to be cleaned out; some of them have collapsed by rust; the residents have fought for years for storm sewers in this area. This is an ongoing problem that is neglected by the city. She did not know about the neighborhood meetings. She is somewhat concerned about the reduction in the setback on A Street; there are no sidewalks; there will be truck traffic in the park; there will be children going to the school.

Ms. Pearson urged that before making definite plans for this shopping center, there is a need to address the basic underlying issues that cannot be addressed any other way.

Wallace asked Ms. Pearson if she is against the shopping center. Her comment was that there was a grocery store about 5 years ago and it folded. There are more residents now and she agrees that they do need the grocery store, but she is not sure it should be a shopping center. The neighborhood is already there and already established.

**5. Mike Morosin**, past president of Malone Neighborhood Association, commented that he has traveled West A for almost 30 years and has crossed the road when the water was flowing. The sins of the past administrations have not considered the stormwater problems. We've given waivers, we've looked the other way, it's hard to keep up on the maintenance. If we can't do the maintenance, then let's get the personnel to do it properly. Before approving this big parking lot and grocery store, we need to take a look at the runoff and cure it ahead of time. No one is against the grocery store because it is needed. Let's see if we can't accomplish some of these problems. We are in big trouble here with stormwater problems with old antiquated infrastructure; we are going to have a serious problem if we do get the rains that Grand Forks got. What about the ice skating rink being a mosquito hole?

#### Response by the Applicant

Mr. Hunzeker stated that a traffic study has been submitted and reviewed by Public Works. Condition #3.3 requires a transportation improvements agreement before any building permits are issued. It is anticipated that those improvements will include this developer paying for costs of turn lanes at Coddington & A and improvements some distance back

from that intersection. Public Works is prepared to do some improvements in 99-2000 which would coincide with opening of the shopping center.

As to parking lots and open space, Mr. Hunzeker pointed out the parking lot coming off of Coddington Avenue. This parking lot is being eliminated and turned into green space so there will not be any green space lost to parking.

Mr. Hunzeker concurred that drainage is a problem. The biggest problem that exists in this area is undersized and under-maintained storm sewers. This developer is providing for stormwater detention in all of the front yard areas between the Garfield entrance and the north entrance on Coddington, to the west entrance on A Street and between the two entrances on A Street. This is why this development will not make the drainage worse. The only fix is building the storm were in A Street which comes through the long term Capital Improvements Program. This developer does not have control of that. If we are going to have this shopping center, we need to do it this way. He understands and sympathizes with those who have water problems, but we cannot fix them with this project.

The waiver of the front yard setback is needed because this development is being asked to dedicate the whole 50' of right-of-way on a non-major arterial.

As far as sidewalks, Mr. Hunzeker advised that there is a sidewalk along the east side 8' wide, extending into the park. The parking has been moved up to an area closer to the playground. The sidewalk will meander across the park to a point somewhere near the fire station. There will be sidewalks on both Coddington and "A" Streets, on both the west and north sides of this development. There are also sidewalk connections to the sidewalks to the residential area to the east.

Bayer asked how to get the stormwater problem taken care of on West A. What alternative do the neighbors have? Dennis Bartels of Public Works offered that the long term solution is a curb and gutter, urban cross section street in West "A" and a storm sewer system. The houses on the north are problematic because their driveways go down. There is not a good textbook solution. The neighbors could go to the City Council to get the funding for the street paving and storm sewer through the CIP process. The Council could reconsider re-prioritization in the CIP as they look at this project. Currently, there is no money for West "A" in the CIP. There is nothing programmed now nor in the near future. There is some money programmed for a traffic signal at Coddington & West "A". The maintenance department is reviewing those driveway culverts.

Public hearing was closed.

**COMPREHENSIVE PLAN CONFORMITY NO. 99006**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

June 2, 1999

Bayer moved a finding of conformance with the Comprehensive Plan, seconded by Wilson and carried 5-0: Wilson, Bayer, Duvall, Wallace and Hopkins voting 'yes'; Schwinn, Krieser, Bleed and Steward absent.

**CHANGE OF ZONE NO. 3182**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

June 2, 1999

Bayer moved approval, seconded by Duvall. The purpose of this change of zone is to allow the shopping center and improvements to the park to occur. Motion for approval carried 5-0: Wilson, Bayer, Duvall, Wallace and Hopkins voting 'yes'; Schwinn, Krieser, Bleed and Steward absent.

**USE PERMIT NO. 118**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

June 2, 1999

Bayer moved approval of the Planning staff recommendation of conditional approval, with amendments deleting Condition #1.1.8, #1.1.9 and the last sentence of #1.1.11, seconded by Wilson.

Bayer believes the amendments will allow the developer who has spent the time and money to develop in the way he best sees fit for his economics. With respect to the drainage issues, the Planning Commission is not the funding agency. We have tried to make this issue a matter of record and suggest that the City Council should seriously consider reappropriating the Public Works budget to address this issue, if, in fact, it is as serious of a problem as it appears to be to the residents. It seems that the timing for fixing this now makes all the sense in the world. He is in support of this shopping center and cleaning up the park, but can't solve the drainage problem with this action other than identifying it as an issue as it is sent on to the City Council.

Wallace agrees. He strongly encouraged the neighbors to go to the City Council about the drainage issues.

Steve Henrichsen suggested that staff and the developer agree that rather than deleting the second sentence of Condition #1.1.11, the Commission consider a 10' easement as opposed to 20'. He also suggested that the Commission seek a response from Public Works before deleting Condition #1.1.9.

Bayer stated that if there is an issue that Public Works and the developer want to discuss, that condition could be added back in at the Council.

Hopkins stated that she did live out in this area for 8 or 9 years and she is very pleased to see that there is going to be a development out there. She does want to see the issues of traffic and drainage dealt with.

Motion for conditional approval, deleting Condition #1.1.8 and Condition #1.1.9, and amending Condition #1.1.11 to show a 10' pedestrian easement, carried 5-0: Wilson, Bayer, Duvall, Wallace and Hopkins voting 'yes'; Schwinn, Krieser, Bleed and Steward absent.

Commissioner Wilson left and there was no longer a quorum. Change of Zone No. 3177 and Combined Use Permit/Special Permit No. 14 are held over until June 16, 1999.

There being no further business, the meeting was adjourned at 3:55 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on June 16, 1999.